

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**ALEXANDER OKUN, M.D.**

Plaintiff,

v.

**MONTEFIORE MEDICAL CENTER, et  
al.,**

Defendants.

Civil Action No. 11-CV-9615 (PGG)

**DECLARATION OF JEAN L. SCHMIDT  
IN SUPPORT OF DEFENDANT'S  
MOTION TO DISMISS FOR LACK OF  
SUBJECT MATTER JURISDICTION**

Jean L. Schmidt, an attorney duly admitted to this court, hereby declares under penalty of perjury as follows:

1. I am an attorney with the firm Littler Mendelson, P.C., attorneys of record for the Defendant Montefiore Medical Center ("Montefiore") or ("Defendant") in this action.
2. I submit this declaration in support of Defendant's Motion to Dismiss based on the books and records maintained in the ordinary course of business by Defendant.
3. Attached hereto as Exhibit A is a true and correct copy of Montefiore's severance policy, Policy II-17a, which is maintained in the ordinary course of Montefiore's business.

Date: September 24, 2012  
New York, New York

/s/

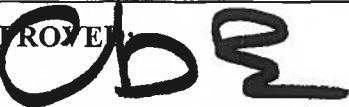
Jean L. Schmidt  
LITTLER MENDELSON  
A Professional Corporation  
900 Third Avenue  
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212.583.9600

Attorneys for Defendant

# **EXHIBIT A**



# MONTEFIORE

HUMAN RESOURCES  POLICY AND PROCEDURE MANUAL	SUBJECT: <b>Termination of Full-time Salaried Professional Staff Positions, Appointment of PhDs</b>
	POLICY NUMBER: II – 17a    PAGES: 1 of 3
	DATE ISSUED: 05/06/87
APPROVED: 	DATE REVISED: 09/01/02
	DATE REVIEWED: 06/01/09

## GENERAL POLICY:

It is the policy of Montefiore Medical Center to provide terminal benefits to full time salaried Practitioners with one or more years of employment. The terminal benefits are based on years of service.

## POLICY APPLICABLE TO:

All full-time Practitioners employed before August 1, 1996.

## DEFINITIONS FOR THE PURPOSE OF THIS POLICY:

- a. Full-time: A full-time salaried Practitioner is one who is carried on the payroll of Montefiore Medical Center having a bi-weekly schedule hours equal to 80 hours
- b. Practitioner: A Practitioner is a physician, dentist, veterinarian or professionally appointed Ph.D.
- c. Professionally Appointed Ph.D.: A Professionally Appointed Ph.D. is any person employed by the Medical Center in a position for which a Ph.D. degree is required (a "Ph.D. Position") and who has a faculty appointment at the Albert Einstein College of Medical (the "Medical School").

## TERMINATION:

A Practitioner may be terminated by the Medical Center only for one or more of the following reasons:

- a. For cause;
- b. For bona fide institutional financial exigency;
- c. For bona fide reorganization of educational, research or clinical services in which the Practitioner is employed; and
- d. Because the termination will enhance the future growth, quality and productivity of a Department.



MONTEFIORE

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	<b>DATE REVIEWED:</b>

**NOTICE PERIOD/SEVERANCE:**

A Practitioner employed before August 1, 1996 who is terminated for other than cause may opt either for a notice period or severance pay. If a Practitioner opts for a notice period, during that period, he/she shall be expected to continue to fulfill the duties and responsibilities of his/her position and shall continue to receive his/her salary and be covered by the fringe benefits to which he/she is entitled as an employee, at the level to which he/she was entitled immediately prior to the commencement of the notice period.

A Practitioner who opts for severance pay shall leave the employment of the Medical Center and shall receive bi-weekly severance payments for the period and at the rate set forth below:

<b><u>LENGTH OF SERVICE</u></b>	<b><u>NOTICE/SEVERANCE OPTIONS</u></b>
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Fifteen years or less

Choice of twelve months' notice or six month's severance pay.

More than fifteen years

Choice of twelve month's notice or six month's severance pay. The Practitioner shall also be entitled to automatic review of the amount of severance pay by the President of the Medical Center.

Severance payments will be disbursed on a bi-weekly basis on the Practitioner's normal payday for the duration of the severance period. The amount of each bi-weekly payment will be 1/26<sup>th</sup> of the base annual Medical Center earnings of the Practitioner in effect immediately prior to the commencement of the severance/notice period, exclusive of supplemental income or fringe benefits. Employer contributions to the Tax Deferred Annuity Plan shall be paid on all severance payments.

Where a Practitioner initially opts for a notice period but thereafter chooses to leave the Medical Center before six months has expired, he/she shall receive bi-weekly severance pay for the balance of time remaining in the six-month period. However, if a Practitioner chooses to leave employment any time he/she has worked six months of a longer notice period, he/she shall be entitled to no further payment. (Example 1: Where a Practitioner is entitled to a six-month notice period, and has opted for notice, but then decides to leave after two months, he/she would be entitled to severance pay over a period of four months. Example 2: Where a Practitioner is entitled to twelve-month notice period, and has opted for notice, but then decides to leave after eight months, he/she is entitled to no further payments.)



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**PROCEDURE:**

1. Practitioners will receive written notice of termination with a description of their options, i.e., notice period or salary continuation. The appropriate Chairman or designee will present this notice to the Practitioner. Where this cannot be accomplished in person, it will be done by certified mail. The salary continuation or notice period starts on the eighth day following the receipt of the notice letter.
2. Practitioners hired before 08/01/96 will be offered seven (7) calendar days from the receipt to decide upon which option to choose. If a Practitioner does not make a choice of notice or salary continuation within the seven (7) days, the Practitioner will be deemed to have elected the notice period.
3. If salary continuation is selected, it cannot be changed to notice once the salary continuation has started.
4. Notwithstanding any of the above, and despite a Practitioner's option for a notice period, the Medical Center may require that a Practitioner leave the Medical Center immediately or at any time during a notice period. In such case, unless the Practitioner is terminated for cause, during the balance of the notice period, the Practitioner shall receive bi-weekly severance payments and will be continued in the fringe benefits program.

*All Medical Center Human Resources policies and practices are guidelines and may be changed, modified or discontinued at any time by the Medical Center's Senior Vice President of Human Resources, or designee, with or without notice. Exceptions do not invalidate the basic policy.*

**CERTIFICATE OF SERVICE**

I, Jean L. Schmidt, hereby certify that, on September 24, 2012, I electronically filed the foregoing Declaration of Jean L. Schmidt with the Clerk of the District Court for the Southern District of New York using the CM/ECF system, which sent notification of such filing to attorney for Plaintiff:

Gail Auster, Esq.  
Law Offices of Gail I. Auster & Associates, PC  
17 Battery Place, Suite 711  
New York, NY 10004  
Ph: 914-707-4000

To her registered email address: [gailauster@lawauster.com](mailto:gailauster@lawauster.com)

/s/ Jean L. Schmidt  
Jean L. Schmidt